



DEPARTMENT OF THE ARMY
OFFICE OF THE ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY
9301 CHAPEK ROAD
FORT BELVOIR VA 22060-5527

August 1, 2019

SAAA-LS

Austin R. Evers
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
Sent via email: foia@americanoversight.org

Dear Mr. Evers:

This letter is in response to your Freedom of Information Act (FOIA) request dated June 24, 2019. Your request was referred to us by the U.S. Army Freedom of Information Act Division, Records Management Declassification Agency (RMDA). You are seeking records pertaining to your enclosed FOIA request. Your request was assigned our office tracking number FA-19-0138.

Under the FOIA, a government agency is required to make a "good faith effort to conduct a search" 5 USC 552(a)(3)(A). Our office requested a records search from the Office of the Secretary of the Army (SECARMY). SECARMY conducted a search and review for any records responsive to your FOIA request; however, this search failed to yield responsive records pertaining to item 1 of your request. We have determined this search was reasonable. See *Duenas Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 3154 (D.C. Cir. 2003). Pertaining to item 2, we are releasing (4) pages with partial redactions that are responsive to your FOIA request. All redactions and withholdings have been made pursuant to Exemption (b)(6) of the FOIA as described below.

Exemption 6 of the FOIA 5 U.S.C. § 552(b)(6)

Exemption (b)(6) of the FOIA protects from mandatory disclosure "personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of privacy." 5 U.S.C. § 552(b)(6) (2011). To qualify for protection under Exemption (b)(6), records must meet two criteria: (1) they must be "personnel and medical files and similar files," (2) the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." *Id.*; *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599-603 (1982). The first prong is met if the information "appl[ies] to a particular individual" and is "personal" in nature. *New York Times Co. v. NASA*, 852 F.2d 602, 606 (D.C. Cir. 1988). The second prong requires courts to strike a "balance between the protection of an individual's right to privacy and the preservation of the public's right to government information." *United States Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982). The "public interest" in the analysis is limited to the "core purpose" for which Congress enacted the FOIA: to "shed . . . light on an agency's performance of its statutory duties." *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

We are withholding the names of personnel, other than Senior Executive Service members and General Officers and contact information for all Army personnel under Exemption 6. 5

U.S.C. § 552(b)(6). See *Judicial Watch, Inc. v. United States*, No. 03-1160, 2004 WL 26736, at *4 (4th Cir. Jan. 6, 2004). Under the Exemption (b)(6) balancing test, the Supreme Court held in a similar case that disclosure of employee addresses “would not appreciably further the citizens’ right to be informed about what their Government is up to and, indeed, would reveal little or nothing about the employing agencies or their activities.” *United States Dep’t of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487 (1994). The same is true here. Disclosure of the names, contact and personal information of government employees would contribute little to the public’s understanding of government activities. By contrast, such disclosure would constitute a “non-trivial” and “not insubstantial” invasion of government employees’ privacy interests. *Id.* at 500, 501.

For any further assistance and to discuss any aspect of your request, you have the right to contact the Army FOIA Public Liaison Officer, Alecia Bolling, by email at us.army.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil or by phone at (571) 515-0306. Additionally, you may contact the Office of Government Information Services (OGIS) at the national Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at ogis@nara.gov, telephone number (202) 741-5770 toll free at (877) 684-6448 or by facsimile at (202) 741-5769.

This letter constitutes a “no record” determination under the FOIA. This determination has been made on behalf of the Administrative Assistant to the Secretary of the Army, who has designated that this office will act as the Initial Denial Authority for records maintained by the Office of the Secretary of the Army and its serviced activities. You have the right to file an administrative appeal with the Office of the Army General Counsel within ninety (90) calendar days. See 32 C.F.R. § 518.17(c). Their mailing address is:

Department of the Army
Office of the General Counsel
104 Army Pentagon, Room 2E724
Washington, D.C. 20310

If you have any questions regarding this letter or the information furnished, please contact this office at (703) 614-5871 or email at usarmy.belvoir.hqda-oaa-rpa.mbx.oaa-cals-mailbox-foia@mail.mil. In all correspondence please refer to FOIA number FA-19-0138.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul V. DeAgostino". The signature is stylized with a large initial "P" and a long horizontal stroke.

Paul V. DeAgostino
Senior Counsel

Enclosure(s): 4 pages



SECRETARY OF THE ARMY
WASHINGTON

17 April 2018

MEMORANDUM FOR SECRETARY OF THE DEFENSE

SUBJECT: SECRETARY OF THE ARMY ESPER, AMENDED DISQUALIFICATION
STATEMENT AND SCREENING ARRANGEMENT

1. This memorandum amends the Disqualification Statement and Screening Arrangement I executed on 28 November 2017, principally to notify you that I no longer hold the conflicting interests directed for divestment in the Ethics Agreement I executed on 26 July 2017. With the assistance of Army Ethics Officials, I want to continue to ensure that I do not participate in certain matters with parties with which I had a personal or business relationship.

2. RECUSAL OBLIGATIONS

a. STATUTORY REQUIREMENTS.

1) On 7 February 2018, I divested all my interests in Raytheon Company (Raytheon) stock, as required by 18 U.S.C. § 208(a) and my Ethics Agreement. On 12 February 2018, the Office of the Army General Counsel notified the Office of Government Ethics (OGE) and the Department of Defense Standards of Conduct Office (SOCO) of this divestiture and compliance with my Ethics Agreement. I will continue to not participate personally and substantially in any "particular matter" that has a direct and predictable effect on my remaining financial interests or those of any persons whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

2) Additionally, because of my continued participation in Raytheon's deferred compensation plan, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of Raytheon to provide these benefits, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

**SUBJECT: SECRETARY OF THE ARMY ESPER, DISQUALIFICATION STATEMENT
AND SCREENING ARRANGEMENT**

b. REGULATORY & ETHICS PLEDGE REQUIREMENTS.

1) For a period of two years beginning on November 20, 2017, I will continue to not participate personally and substantially in any particular matter involving specific parties that are directly and substantially related to Raytheon, including regulations and contracts. While it is possible to receive a waiver of the Administration's Ethics Pledge (Executive Order 13770) or, during my first year in office, to obtain the appropriate authorization from the agency designee pursuant to 5 C.F.R. 2635.502(d), as stated in my 21 September 2017 letter to the Chairman of the Senate Armed Services Committee, I will not seek or accept waivers to this two year restriction.

2) For a period of two years beginning on November 20, 2017, I will continue to not participate in any particular matter on which I lobbied within the two years before my appointment or participate in the specific issue area in which that particular matter falls, pursuant to paragraph 7 of my Ethics Pledge. As stated in my 21 September 2017 letter to the Chairman of the Senate Armed Services Committee, I will not seek or accept waivers to this two year restriction.

3) For a period of one year after my resignation from the Lake Braddock Athletic Boosters Club, I will continue to not participate personally and substantially in any particular matter involving specific parties in which I know this Club is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

3. SCREENING ARRANGEMENT.

To help ensure that I do not participate in matters relating to these entities, I have taken or will take the following steps:

a. I have instructed COL (b) (6) as my Military Assistant, or his successor, to screen all matters directed to my attention that involve outside entities or that require my participation to determine if they involve any of the entities or organizations listed above.

b. If COL (b) (6) or his successor determines that any particular matter may directly and predictably affect a financial interest in any entity or organization listed above, that any such entity or organization is or represents a party to a particular matter involving specific parties, he/she will refer them to Under Secretary of the Army Ryan D. McCarthy for action or assignment, or another appropriate senior Army official, without my knowledge or involvement.

c. To help ensure that I do not inadvertently participate in matters from which I should be recused, I am directing COL (b) (6) to seek the assistance of an ethics

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official in the Army Office of General Counsel if he/she is uncertain whether I may participate in a matter.

4. In consultation with an Army ethics official, I will again revise and update this memorandum if warranted by changed circumstances, including changes in my financial interests, my personal or business relationships, or the nature of my official duties. I will provide a copy of the revised screening arrangement memorandum to you, Under Secretary McCarthy, COL (b) (6) and the General Counsel.



Mark T. Esper
Secretary of the Army

cc:
Under Secretary of the Army
Army General Counsel
Deputy General Counsel (Ethics & Fiscal)
Special Assistant to the Secretary
Executive Officer



GENERAL COUNSEL OF THE DEPARTMENT OF THE ARMY

104 ARMY PENTAGON
WASHINGTON, DC 20310-0104

SAGC

17 April 2018

MEMORANDUM FOR Secretary of the Army

MR. SECRETARY,

SUBJECT: Amended Disqualification Statement and Screening Arrangement

On 12 February 2018, you divested all of your interests in Raytheon Company stock as required by 18 U.S.C. §208 and your Ethics Agreement. In light of this divestment, attached for your signature is an amended disqualification statement and screening arrangement, reflecting your changed status under the ethics provisions. My office will ensure this amended statement is given to the Department of Defense Standards of Conduct Office who will in turn provide it to the Secretary of Defense. This will fulfil your promise in your 28 November 2017 disqualification statement to notify the Secretary of Defense once you no longer held the Raytheon stock.

v/r Jim

Encl.

James E. McPherson
General Counsel

MR. SECRETARY,

*ROUTINE "HOUSEKEEPING" FROM
YOUR RAYTHEON DIVESTMENT -*

v/r Jim